

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CITY OF HUNTINGTON,
Plaintiff,**

**v.
AMERISOURCEBERGEN DRUG
CORPORATION, et al.,
Defendants.**

CIVIL ACTION NO. 3:17-01362

**CABELL COUNTY COMMISSION,
Plaintiff,**

**v.
AMERISOURCEBERGEN DRUG
CORPORATION, et al.,
Defendants.**

Consolidated case:

CIVIL ACTION NO. 3:17-01665

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL
DEFENDANTS' COMMUNICATIONS WITH DEA**

COME NOW Plaintiffs, CITY OF HUNTINGTON and CABELL COUNTY COMMISSION, who submit this motion to reply memorandum in further support of their motion (Dkt. 269) to compel Defendants' communications with DEA. Plaintiffs state in reply to Defendants' response as follows:

Plaintiffs' Motion seeks an order compelling Defendants to produce all communications between DEA and Defendants dating back to 1980.¹ In their April 9, 2020, response to Plaintiffs' Motion, Defendants agreed to the relief Plaintiffs requested and suggested that Plaintiffs' Motion is moot. Specifically, Defendants agreed "to conduct a reasonable search for and produce any communications with DEA related to the approval or request for approval of Defendants' SOM systems they are able to locate" dating back to 1980. *See* Dkt. 306. Plaintiffs held their reply in

¹ *See* Dkt. 269.

abeyance until after the document discovery deadline passed to determine Defendants' compliance with their agreement to search for and produce the DEA communications.²

No Defendants have since made any production that identifies such communications with the DEA. The Court only recently extended the document discovery deadline to June 12, 2020,³ so any productions of pre-2006 DEA communications should have been complete by the original document discovery deadline of April 30, 2020.

Plaintiffs, therefore, request that Defendants identify any responsive documents already produced or confirm that their searches are complete and have produced no such documents. Plaintiffs further request that Defendants confirm that the searches they have conducted were designed to reasonably identify documents that include guidance from the DEA on Defendants' SOMS, in addition to the DEA's explicit approval or Defendants' request for approval, as requested in Plaintiffs' Motion⁴ and that those searches were not limited to only custodial files. Defendants must search any location to which they have access that may contain responsive documents.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request an order compelling Defendants to confirm that they have conducted searches that would reasonably identify communications regarding DEA SOMS guidance, DEA's explicit approval or disapproval of Defendants' SOMS, and Defendants' request for DEA approval of their SOMS, as Plaintiffs requested in their Motion. Plaintiffs further request that Defendants be compelled to identify any pre-2006 DEA communications they have produced.

² April 13, 2020 email from Counsel for Plaintiffs to SM Wilkes and Counsel for Defendants.

³ Dkt. 410.

⁴ See Plaintiffs' Motion (Dkt. 269), ¶ 4.

Dated: May 12, 2020

Respectfully submitted,

Plaintiffs,

THE CITY OF HUNTINGTON and
CABELL COUNTY COMMISSION

/s/ Michael J. Fuller, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 12, 2020, a copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL DEFENDANTS' COMMUNICATIONS WITH DEA** has been filed electronically using the Court's CM/ECF system and will be served *via* the Court's CM/ECF filing system, which will send notification of such filing to the attorneys of record at their e-mail addresses on file with the Court.

/s/ Michael J. Fuller, Jr..

Michael J. Fuller, Jr.